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April 6, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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By Hand Delivery

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: Notice of Ex Parte Presentation - April 4, 2001

**Public Notice DA 00-1953 "Wireless Telecommunications Bureau Seeks
Comment on Request for Clarification of De Facto Control Policy and
Proposed Spectrum Lease Agreement"**

**In the Matter of Promoting Efficient Use of Spectrum Through the
Elimination of Barriers to the Development of Secondary Markets
WT Docket No. 00-230**

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), Golden West Telecommunications Cooperative, Inc. ("Golden West") and Sully Buttes Telephone Cooperative, Inc. ("Sully Buttes") hereby submit this *ex parte* presentation in connection with the above-captioned proceedings.

On April 4, 2001, John Prendergast and Cary Mitchell of the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast met with Katherine M. Harris, Donald Johnson, Paul E. Murray, Gary Oshinsky, John J. Borkowski, and Gary D. Michaels of the FCC's Wireless Telecommunications Bureau to discuss the merits of the spectrum lease and joint operating proposal that was filed with the Commission in conjunction with a request for clarification of *de facto* control policy on June 30, 2000.

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In particular, the parties discussed the need for the Commission's Rules to provide a workable mechanism for rural telephone companies and cooperatives to enter into joint operating arrangements while preserving, to the greatest extent possible, the value of small business and very small business bidding credits that made it possible for them to obtain their FCC licenses in the first place. The Commission's staff has raised a concern that a limited liability company ("LLC") cannot qualify for small business consortium treatment under the Commission's Rules. Without such treatment, the revenues of the LLC members would be added together, in determining whether bidding credits would be preserved under the proposed arrangement.

The value of the bidding credits received by Golden West and Sully Buttes is significant. When Golden West and Sully Buttes initially presented the FCC with their joint operating proposal, Golden West and its affiliates had average annual gross revenues for the previous three years (1997-1999) of \$37,827,700 and total assets of approximately \$155 million.¹ Golden West therefore qualified under the Commission's Rules as a small business (*i.e.*, having average gross revenues of less than \$40 million) for purposes of broadband PCS and LMDS. For the same period, Sully Buttes and its affiliates had average gross revenues of \$12,553,446 and total assets of approximately \$54 million.² Sully Buttes therefore qualified under the Commission's Rules as a very small business (having average gross revenues of less than \$15 million) for purposes of broadband PCS and LMDS. However, if these small businesses are required to aggregate their gross revenues, the sum is \$51,633,106, which is well beneath the \$125 million threshold for entrepreneur status, but which exceeds the \$40 million small business size threshold for broadband PCS and LMDS. Considering the amounts that Golden West and Sully Buttes paid for their licenses, loss of small business eligibility would require Golden West to make unjust enrichment payments of approximately \$178,350 and would require Sully Buttes to make unjust enrichment payments of approximately \$363,029. In sum, this would be over *one-half million dollars* that these carriers could not put toward the provision of service to their rural customers.³

I. Small Businesses and Rural Carriers Will Need to Work Together in Order to Become Successful Competitors and to Bring Advanced Telecommunications Services to All Americans Without Significant Delays

As Golden West and Sully Buttes have explained in connection with their joint operating proposal, small businesses and rural carriers will need to work together in order to become successful competitors and to bring advanced telecommunications services to all Americans without significant delays.⁴ By conducting joint operations, rural carriers will be able to share costs and achieve economies of scale that will help them to meet the exceptionally large capital requirements of wireless services such as broadband PCS and LMDS. Joint operation will also allow small businesses to secure volume discounts on network infrastructure and customer premises equipment. Such discounts can reduce the costs by 30% or more, and will be absolutely

¹ The gross revenues for Golden West and its affiliates are provided in Attachment A.

² The gross revenues for Sully Buttes and its affiliates are provided in Attachment A.

³ The amounts that Golden West and Sully Buttes paid for their licenses, and total bid credits each received, are shown in Attachment B.

⁴ Long Lines Ltd. ("Long Lines") has chosen to withdraw from participation in the proposed joint operating arrangement, as reflected in a minor amendment to the Rural Carriers' request that is being filed with the FCC today.

necessary to promote the rapid buildout of rural systems.

With industry consolidation and the prevalence of nationwide carriers in today's wireless marketplace, rural cooperatives like Golden West and Sully Buttes face further barriers because they are simply too small by themselves to negotiate favorable interconnection, roaming, affiliation and joint marketing agreements. In the absence of such inter-carrier arrangements, rural consumers may not have the ability to use their phones and other communications devices when away from home, and they will not have affordable access to services such as expanded local calling areas, text messaging and wireless e-mail, that subscribers of larger carriers take for granted.

II. A Small Business Consortium Mechanism Without Limited Liability is Poorly Suited for Organizing a Joint Operating Company that Meets the Parties' Business Needs

The Commission has taken a first step to promote the interests of small businesses by allowing them to pool their resources and to participate in auctions as small business consortia (and very small business consortia) while preserving the consortium's (and each consortium member's) eligibility for small business bidding credits. However, Golden West and Sully Buttes, and other South Dakota telephone cooperatives that have explored joint operation under the Commission's rules⁵, have come to the conclusion that a classic "joint venture" business form, which is treated as a partnership under South Dakota law⁶, is ill suited for complex and ongoing business activities and cannot be appropriately modified to meet the parties' business needs. This is because as the scope of the members' joint business activities expands, joint venture participants expose themselves to the potential for joint and several liability for the entire enterprise. Such liability extends far beyond the extent of each member's individual stake in the venture. Of course, the participating parties could each create a corporate subsidiary to insulate themselves from liability. However this would result in additional legal and administrative costs and potential tax consequences that ruin the deal.

After careful consideration of alternative arrangements, Golden West and Sully Buttes decided that a limited liability operating company, and a series of spectrum lease arrangements,

⁵ Sully Buttes notes that its wholly-owned subsidiary, Venture Wireless, Inc. ("Venture") is a member of the VMN Consortium ("VMN"), a very small business consortium that was a successful bidder in FCC Auction No. 22 for broadband PCS C-Block licenses in the Huron and Mitchell, South Dakota BTAs. The other members of VMN are Midstate Communications, Inc. ("Midstate"), a wholly-owned subsidiary of Midstate Telephone Company, and Northern Valley Wireless, Inc. ("Northern"), a company owned in equal shares by Northern Electric Cooperative ("NEC") and James Valley Cooperative Telephone Company ("James Valley"). In order to develop their licensed spectrum more quickly and more intensively throughout these markets, VMN is currently seeking to add four new consortium members that are each wholly-owned subsidiaries or affiliated with South Dakota rural telephone cooperatives: Valley Cable & Satellite Communications, Inc. ("Valley"), Sanborn Telephone Cooperative, Inc. ("Sanborn"), Hanson Communications, Inc. ("Hanson") and Interstate Satellite Services, Inc. ("Interstate"). See FCC Form 603 Application of VMN Consortium, FCC File No. 0000285142, *Public Notice Report No. 722*, December 13, 2000. These carriers are likewise seeking small business consortium for their jointly-owned LLC.

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was the best structure for pursuing their business plan. As an LLC, profits and losses from the venture could be allocated fairly among the parties, without double taxation, and each member is able to limit its overall liability to the amount of its investment in the venture (e.g., the cost of extending the network into its operating territory, plus a proportionate share of LLC's fixed costs). Most importantly, each cooperative could maintain its independence and still participate in the management of the joint enterprise, as the Commission intended for small business consortium members to do.

III. The FCC Should Allow Small Businesses and Rural Telephone Companies to Organize Limited Liability Companies that Have Small Business Consortium Status if their Membership is Limited to Small Businesses

Golden West and Sully Buttes have demonstrated to the Commission that each is eligible for treatment under the Commission's rules as a small business, and that each is therefore eligible to participate in a small business consortium. The Commission's Rules do not expressly forbid the use of an LLC structure for a small business consortium. Instead, it discusses the formation of such consortia as a "joint venture."⁷ If the Commission interprets this rule to require that parties to a small business consortium may only be a "joint venture" as defined by state law, many rural carriers in states such as South Dakota will be limited to a partnership structure, with unlimited liability. However, if the Commission should interpret its rules to allow the use of "joint ventures" formed as an LLC, rural telephone companies and small businesses can better achieve the "critical mass" needed to successfully obtain spectrum and/or operate a wireless system in less populated areas. It is imperative that the Commission facilitate such arrangements, because rural carriers are the only entities with a stake in bringing service to areas that will not be of interest to larger carriers for many years, if ever. Therefore, there is a net loss of service to the public if rural carriers are not allowed to play the role contemplated by Congress in Section 309(j) of the Act. The Commission has recognized in the Secondary Spectrum Markets proceeding (WT Docket No. 00-230) that its current partitioning mechanism has not succeeded in facilitating rural telephone company participation in the provision of advanced telecommunications services.

While Golden West and Sully Buttes believe that their LLC status is permissible through an interpretation of the Commission's Rules, the Commission should facilitate LLC status for rural consortia by rule change or waiver, if necessary. There would be no harm to the intent of the Commission's small business consortium rule, so long as an applicant can demonstrate and certify that each of its members are and will remain eligible for small business status. Because the rules already require a small business consortium to certify that each member is an independent small business, there is no room for "gaming the system." It would be ironic to deprive rural carriers of limited liability, or to strip them of bidding credits, in the aftermath of an "entrepreneurs' block" auction which saw entities such as Alaska Native Wireless LLC dominate the bidding by spending billions of dollars, while receiving hundreds of millions in small business bid credits.

Although Golden West and Sully Buttes have not yet finalized or entered into a limited liability company agreement, they would gladly accept such a limitation because their business plans do not contemplate equity investment or management participation by larger carriers. Such

⁷ See, e.g., 47 C.F.R. §§ 24.720 (d) and 101.1112 (f).

a limitation will ensure that the benefits of small business status are reserved only for *bona fide* small businesses, as the Commission rules intend, and that such benefits are used to support carriers that have a demonstrated their commitment to providing service in remote and high cost areas.

For the reasons expressed herein, Golden West and Sully Buttes respectfully request that the Wireless Bureau grant them authority to pursue their joint operating arrangement as a limited liability company that qualifies for treatment under the Commission's Rules as a small business consortium.

Please contact the undersigned counsel if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Prendergast". The signature is fluid and cursive, with the first name "John" being the most prominent.

John A. Prendergast
D. Cary Mitchell
Counsel to Golden West
Telecommunications Cooperative, Inc.
and Sully Buttes Telephone Cooperative, Inc.

cc: Katherine M. Harris
Donald Johnson
Paul E. Murray
Gary Oshinsky
John J. Borkowski
Gary D. Michaels

Attachment A
Gross Revenues and Total Assets of
Golden West and Sully Buttes

Sully Buttes Telephone Cooperative, Inc.

TIN	Legal Name
46-0238017	Sully Buttes Telephone Cooperative, Inc. (SBTC)
46-0391536	Venture Communications, Inc. (VCI)
46-0446377	Venture Wireless, Inc. (VWI)

	1996	1997	1998	1999	Assets
SBTC	7,575,550	6,290,050	8,176,726	7,666,260	
VCI	2,690,750	5,817,443	7,109,819	6,355,620	
VWI	0	0	0	0	
TOTAL	\$ 10,266,300	\$ 12,107,493	\$ 15,286,545	\$ 14,021,880	\$ 54,053,613

Avg '96-'98 \$ 12,553,446

Avg '97-'99 \$ 13,805,306

Golden West Telecommunications Cooperative, Inc.

TIN	Legal Name
46-0237830	Golden West Telecommunications Cooperative, Inc. (GWTC)
46-0447798	GW Wireless, Inc. (GWW)
46-0386025	Golden West Tele-Tech, Inc. (GWTT)
46-0410656	Golden West Cablevision, Inc (GWC)
46-0439083	Golden West PCS, Inc. (GWPCS)
46-0427493	Golden West Telephone Properties, Inc. (GWTP)

	1996	1997	1998	1999	Assets
GWTC	12,550,197	15,128,663	16,332,435	17,884,043	\$ 99,361,849
GWW	0	0	0	0	\$ -
GWTT	1,934,945	2,230,918	2,332,955	2,418,545	\$ -
GWC	1,013,201	1,092,667	1,143,373	666,293	\$ 3,920,435
GWPCS	0	0	0	0	\$ 0
GWTP	9,629,031	16,440,241	18,719,639	19,093,627	\$ 51,702,211
TOTAL	\$ 25,127,374	\$ 34,892,489	\$ 38,528,402	\$ 40,062,508	\$ 154,984,495

Avg '96-'98 \$ 32,849,422

Avg '97-'99 \$ 37,827,800

total '96-'98 \$ 45,402,868

total '97-'99 \$ 51,633,106

Attachment B
Broadband PCS and LMDS Licenses of
Golden West and Sully Buttes

<i>BTA Market</i>	<i>Service</i>	<i>Bid Credit</i>	<i>Gross</i>	<i>VSB Net</i>	<i>SB Net</i>	<i>Difference if SB</i>	<i>Difference if not SB</i>
BTA421 - Sioux City, IA	LMDS	45%	\$427,000	\$234,850	\$277,550	(\$42,700)	(\$192,150)
BTA205 - Iowa City, IA	LMDS	45%	\$115,731	\$63,652	\$75,225	(\$11,573)	(\$52,079)
BTA001 - Aberdeen, SD	LMDS	45%	\$157,000	\$86,350	\$102,050	(\$15,700)	(\$70,650)
BTA199 - Huron, SD	LMDS	45%	\$107,000	\$58,850	\$69,550	(\$10,700)	(\$48,150)
			\$806,731		Venture Total	(\$80,673)	(\$363,029)

BTA Market	Service	Bid Credit	Gross	SB Net	Difference If SB	Difference If not SB
BTA369 - Rapid City, SD	LMDS	35%	\$318,000	\$206,700	\$0	(\$111,300)
BTA369 - Rapid City, SD	PCS - C	15%	\$265,000	\$225,250	\$0	(\$39,750)
BTA301 - Mitchell, SD	PCS - E	0%	\$17,000	\$17,000	\$0	\$0
BTA464 - Watertown, SD	LMDS	35%	\$78,000	\$50,700	\$0	(\$27,300)
			\$678,000	GW Total		(\$178,350)
				GRAND TOTAL	(\$80,673)	(\$541,379)

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III. The FCC Should Allow Small Businesses and Rural Telephone Companies to Organize Limited Liability Companies that Have Small Business Consortium Status if their Membership is Limited to Small Businesses

Golden West and Sully Buttes have demonstrated to the Commission that each is eligible for treatment under the Commission's rules as a small business, and that each is therefore eligible to participate in a small business consortium. The Commission's Rules do not expressly forbid the use of an LLC structure for a small business consortium. Instead, it discusses the formation of such consortia as a "joint venture."⁷ If the Commission interprets this rule to require that parties to a small business consortium may only be a "joint venture" as defined by state law, many rural carriers in states such as South Dakota will be limited to a partnership structure, with unlimited liability. However, if the Commission should interpret its rules to allow the use of "joint ventures" formed as an LLC, rural telephone companies and small businesses can better achieve the "critical mass" needed to successfully obtain spectrum and/or operate a wireless system in less populated areas. It is imperative that the Commission facilitate such arrangements, because rural carriers are the only entities with a stake in bringing service to areas that will not be of interest to larger carriers for many years, if ever. Therefore, there is a net loss of service to the public if rural carriers are not allowed to play the role contemplated by Congress in Section 309(j) of the Act. The Commission has recognized in the Secondary Spectrum Markets proceeding (WT Docket No. 00-230) that its current partitioning mechanism has not succeeded in facilitating rural telephone company participation in the provision of advanced telecommunications services.

While Golden West and Sully Buttes believe that their LLC status is permissible through an interpretation of the Commission's Rules, the Commission should facilitate LLC status for rural consortia by rule change or waiver, if necessary. There would be no harm to the intent of the Commission's small business consortium rule, so long as an applicant can demonstrate and certify that each of its members are and will remain eligible for small business status. Because the rules already require a small business consortium to certify that each member is an independent small business, there is no room for "gaming the system." It would be ironic to deprive rural carriers of limited liability, or to strip them of bidding credits, in the aftermath of an "entrepreneurs' block" auction which saw entities such as Alaska Native Wireless LLC dominate the bidding by spending billions of dollars, while receiving hundreds of millions in small business bid credits.

Although Golden West and Sully Buttes have not yet finalized or entered into a limited liability company agreement, they would gladly accept such a limitation because their business plans do not contemplate equity investment or management participation by larger carriers. Such

⁷ See, e.g., 47 C.F.R. §§ 24.720 (d) and 101.1112 (f).

a limitation will ensure that the benefits of small business status are reserved only for *bona fide* small businesses, as the Commission rules intend, and that such benefits are used to support carriers that have a demonstrated their commitment to providing service in remote and high cost areas.

For the reasons expressed herein, Golden West and Sully Buttes respectfully request that the Wireless Bureau grant them authority to pursue their joint operating arrangement as a limited liability company that qualifies for treatment under the Commission's Rules as a small business consortium.

Please contact the undersigned counsel if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Prendergast". The signature is fluid and cursive, with the first name "John" being the most prominent.

John A. Prendergast
D. Cary Mitchell
Counsel to Golden West
Telecommunications Cooperative, Inc.
and Sully Buttes Telephone Cooperative, Inc.

cc: Katherine M. Harris
Donald Johnson
Paul E. Murray
Gary Oshinsky
John J. Borkowski
Gary D. Michaels

Attachment A
Gross Revenues and Total Assets of
Golden West and Sully Buttes

Sully Buttes Telephone Cooperative, Inc.

TIN	Legal Name
46-0238017	Sully Buttes Telephone Cooperative, Inc. (SBTC)
46-0391536	Venture Communications, Inc. (VCI)
46-0446377	Venture Wireless, Inc. (VWI)

	1996	1997	1998	1999	Assets
SBTC	7,575,550	6,290,050	8,176,726	7,666,260	
VCI	2,680,750	5,817,443	7,109,819	6,355,620	
VWI	0	0	0	0	
TOTAL	\$ 10,266,300	\$ 12,107,493	\$ 15,286,545	\$ 14,021,880	\$ 54,053,613
Avg '96-'98	\$ 12,553,446				
Avg '97-'99	\$ 13,805,306				

Golden West Telecommunications Cooperative, Inc.

TIN	Legal Name
46-0237830	Golden West Telecommunications Cooperative, Inc. (GWTC)
46-0447798	GW Wireless, Inc. (GWW)
46-0386025	Golden West Tele-Tech, Inc. (GWTT)
46-0410656	Golden West Cablevision, Inc (GWC)
46-0439083	Golden West PCS, Inc. (GWPCS)
46-0427493	Golden West Telephone Properties, Inc. (GWTP)

	1996	1997	1998	1999	Assets
GWTC	12,550,197	15,128,663	16,332,435	17,884,043	\$ 99,361,849
GWW	0	0	0	0	\$ -
GWTT	1,934,945	2,230,918	2,332,955	2,418,545	\$ -
GWC	1,013,201	1,092,667	1,143,373	666,293	\$ 3,920,435
GWPCS	0	0	0	0	\$ 0
GWTP	9,629,031	16,440,241	18,719,639	19,093,627	\$ 51,702,211
TOTAL	\$ 25,127,374	\$ 34,892,489	\$ 38,528,402	\$ 40,062,508	\$ 154,984,495
Avg '96-'98	\$ 32,849,422				
Avg '97-'99	\$ 37,827,800				
total '96-'98	\$ 45,402,868				
total '97-'99	\$ 51,633,106				

Attachment B
Broadband PCS and LMDS Licenses of
Golden West and Sully Buttes

Venture Wireless (very small business status)

BTA Market	Service	Bid Credit	Gross	VSB Net	SB Net	Difference if SB	Difference if not SB
BTA421 - Sioux City, IA	LMDS	45%	\$427,000	\$234,850	\$277,550	(\$42,700)	(\$192,150)
BTA205 - Iowa City, IA	LMDS	45%	\$115,731	\$63,652	\$75,225	(\$11,573)	(\$52,079)
BTA001 - Aberdeen, SD	LMDS	45%	\$157,000	\$86,350	\$102,050	(\$15,700)	(\$70,650)
BTA199 - Huron, SD	LMDS	45%	\$107,000	\$58,850	\$69,550	(\$10,700)	(\$48,150)
			\$806,731		Venture Total	(\$80,673)	(\$363,029)

GW Wireless (small business status)

BTA Market	Service	Bid Credit	Gross	SB Net	Difference if SB	Difference if not SB
BTA369 - Rapid City, SD	LMDS	35%	\$318,000	\$206,700	\$0	(\$111,300)
BTA369 - Rapid City, SD	PCS - C	15%	\$265,000	\$225,250	\$0	(\$39,750)
BTA301 - Mitchell, SD	PCS - E	0%	\$17,000	\$17,000	\$0	\$0
BTA464 - Watertown, SD	LMDS	35%	\$78,000	\$50,700	\$0	(\$27,300)
			\$678,000	GW Total		(\$178,350)
				GRAND TOTAL	(\$80,673)	(\$541,379)

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